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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,636	07/26/2004	Serena Giori		4635

7590 07/03/2007  
Serena Giori  
2975 Orange Brace Rd  
Riverwoods, IL 60015

EXAMINER
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BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

MAIL DATE	DELIVERY MODE
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07/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/710,636	<b>Applicant(s)</b> GIORI ET AL.	
	<b>Examiner</b> Christopher P. Bruenjes	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1772

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1772

4. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomi (USPN 4,368,766) in view of Johnson et al (MDDI article).

Regarding claims 1 and 4, Nomi teaches a portable container for potable water or water-based beverages (col.1, 1.5-8). The wall of said container comprises a water repellant water vapor permeable polymeric material such as microporous polytetrafluoroethylene, which has the ability to transmit water vapor while maintaining water and liquid resistance, whereby water vaporization inside said container produces a cooling effect capable of maintaining the temperature of said beverage below ambient when relative humidity is below 100% (col.1, 1.9-32 and col.1, 1.63 - col.2, 1.5). A porous fabric is laminated to the outer surface and/or inner surface of said membrane (col.3, 1.1-6).

Nomi fails to teach using a non-porous membrane as the polymeric material that has the ability to transmit water vapor while containing water and liquids. However, Johnson et al teach that microporous polymer films such as the PTFE film of Nomi although are capable of being waterproof and allow transmission of water vapor they have other deficiencies compared to monolithic non-porous membranes that are waterproof and allow transmission of water vapor through a

Art Unit: 1772

solution/diffusion mechanism (page 1). Johnson et al teach that unlike microporous films, non-porous membranes are not susceptible to surface contamination and are more resistant to abrasion and other mechanical challenges (page 2). Johnson et al further teach that non-porous membranes are better tear strength, odor barrier properties, and surfactant sensitivities (Table I, page 2). One of ordinary skill in the art would have recognized that susceptibility to surface contamination, resistance to abrasion, tear strength, odor barrier properties, and surfactant sensitivities are all properties that would be of concern to the manufacture of a portable container for potable water. Nomi and Johnson et al are analogous insofar as both references are reasonably pertinent to the particular problem with which the inventor was concerned, which is forming water vapor permeable waterproof films for forming articles and one having ordinary skill in the art when faced with the problem of forming a container from a vapor permeable waterproof film would look to other vapor permeable waterproof films to determine the best film for the particular use.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to substitute the water vapor permeable waterproof non-porous membrane of Johnson et al for the water vapor permeable

Art Unit: 1772

waterproof porous membrane of Nomi in order to provide the portable water container of Nomi with a membrane that in addition to being waterproof and water vapor permeable has increased tear strength, increased odor barrier properties, decreased sensitivity to surfactants, increased resistance to abrasion, and property of not being susceptible to surface contamination, as taught by Johnson et al, which would all be useful improved properties for a portable water container.

Regarding claims 2-3, the non-porous membrane of Johnson et al comprise polyether soft segments (page 4) forming thermoplastic elastomers selected from the group consisting of polyether-amides, polyether-urethanes, and polyether esters (page 4).

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489.

Art Unit: 1772

The examiner can normally be reached on Monday thru Friday from 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CPB



Christopher P Bruenjes  
Examiner  
Art Unit 1772

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June 28, 2007